

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Docket No. 06CR6009CJS  
:  
vs. :  
:  
MARIAN ASENOV PENEV :  
Defendant :  
-----x Status

Transcript of Proceedings  
Before Honorable Charles J. Siragusa  
United States District Judge

Friday  
November 17, 2006  
Rochester, New York  
11:00 a.m.

A p p e a r a n c e s :  
RICHARD RESNICK, ESQ.  
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Attorney for Defendant

Reported By:

Karen J. Bush

Official Court Reporter

U.S. District Court - WDNY

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THE COURT: For the record, this is the matter of

1 the United States versus Marian Penev. You are Marian Penev?

2 THE DEFENDANT: Yes.

3 THE COURT: And you're appearing with your attorney  
4 Mr. Thompson; is that correct?

5 THE DEFENDANT: That's correct.

6 THE COURT: The Court notes the presence of Mr.  
7 Resnick on behalf of the government. Counsel, this matter was  
8 put on today to set a trial date. Now, Mr. Resnick, how much  
9 time do we have on the speedy trial?

10 MR. RESNICK: I calculated this morning a full 70  
11 days takes us to January 26th.

12 THE COURT: Bear with me while I get up my computer.  
13 We'll start on the 16th. Put the trial down for the 16th.  
14 How long, counsel, do you anticipate it will take to block out  
15 sufficient time?

16 MR. RESNICK: I anticipate week, week and a half and  
17 Mr. Thompson indicated three.

18 THE COURT: Do you think three?

19 MR. THOMPSON: I think closer to three than a full  
20 week.

21 THE COURT: I know both sides will have a lot  
22 invested in time. We'll set aside three weeks. That takes us  
23 to when?

24 THE CLERK: Up to February 5th.

25 THE COURT: We'll block out that three-week period.

1 I anticipate, I don't know, because, obviously, there is  
2 issues of computers.

3 MR. RESNICK: Yes.

4 THE COURT: I anticipate we'll be in Judge Telesca's  
5 courtroom. Does that accommodate both sides?

6 MR. RESNICK: It would be preferable to get in Judge  
7 Larimer's.

8 MR. THOMPSON: He has the newer system.

9 THE COURT: In the past we've been able to do that.  
10 I'll send Judge Larimer an email and ask if we could possibly  
11 use his courtroom for the courtroom because it will involve --

12 MR. RESNICK: We'd like to show the IMs or emails  
13 that are in issue on the screen to the jury. It would be  
14 easier that way.

15 THE COURT: I will do that and I'll let both of you  
16 know whether he is agreeable to that. If he is, we'll try the  
17 case in Judge Larimer's courtroom. If he is not for some  
18 reason, he is in -- the Kodak case is starting that way down  
19 the road?

20 MR. RESNICK: No, Judge.

21 MR. THOMPSON: My only concern, I start a trial the  
22 same week you do in January and I'm not sure how long it's  
23 supposed to go. I don't have my calendar. How long it's  
24 blocked off, but I need may need your assistance with a state  
25 court judge in accommodating the schedule here.

1 THE COURT: Who is it?

2 MR. THOMPSON: I'm trying to remember which one that  
3 is.

4 THE COURT: I'll do whatever --

5 MR. THOMPSON: Judge Bellini.

6 THE COURT: -- in adjourning your case.

7 MR. THOMPSON: We don't have speedy trial concerns  
8 in that case as we do here.

9 THE COURT: If you look at it, Mr. Thompson, and you  
10 think that becomes necessary, I'll contact Judge Bellini and  
11 see if it's possible to adjourn it.

12 MR. RESNICK: One more thing, your scheduling order  
13 generally sets forth a drop dead plea date. I was wondering  
14 if you could set one. We have the family that comes every  
15 appearance and if there is going to be a lot of prep.

16 THE COURT: I think my scheduling order said that  
17 the date, did my scheduling order indicate the date?

18 MR. RESNICK: Yes, but we had a couple extra  
19 adjournments because of discovery issues.

20 THE COURT: There is no sense in me doing that  
21 unless there is a possibility that it may be resolved by a  
22 plea. It's not the Court's role here to become involved in  
23 plea negotiations unlike the state court. So, I think the  
24 first question I would ask counsel, is there ongoing  
25 discussions and a possibility that the Government and the

1 Defense may reach a written plea agreement?

2 MR. THOMPSON: I've had continuing discussions with  
3 Mr. Resnick. He provided to me a couple of proposed plea  
4 agreements that we discussed in great specificity the terms.  
5 of. Before we set a drop dead date for the plea, I would like  
6 to a chance to look at the remainder of the discovery, he  
7 provided a disk and another one today which will be the final  
8 bit of discovery we want to examine. The examination requires  
9 the assistance of my expert on Monday, but every time we come  
10 to court, there has been additional discovery. We haven't  
11 been in a position, okay, Mr. Penev, it's up to you and we're  
12 waiting two or three months.

13 THE COURT: So I can understand, the Government has  
14 presented -- and, again, because we have a lot of spectators,  
15 the Court doesn't get a copy of the plea agreement until the  
16 parties indicate that they're both on the same page. So I  
17 don't have any clue what the plea agreement says, but a plea  
18 agreement has been presented.

19 MR. RESNICK: There has been a plea agreement  
20 presented to the Defense, I think a couple of drafts. Another  
21 one submitted recently. Mr. Thompson is correct, there has  
22 been additional discovery, really not much more than what he  
23 has seen, but he needs to look at that. But, I think,  
24 hopefully, we would be in a position within the next week or  
25 two for Mr. Penev to make a decision.

1           MR. THOMPSON: That is not going to happen. If we  
2 want to set an arbitrary -- I want an opportunity to look at  
3 the discovery before you start pressuring.

4           THE COURT: First of all, again, whether the case is  
5 tried or whether the Court can approve a plea agreement in the  
6 first instance, that is up to the parties to present me with  
7 an agreement. My concern is that I'm blocking out three weeks  
8 on this case. As both sides know, Judge Telesca is no longer  
9 handling criminal cases, there are certain constraints on the  
10 availability of time. I'm more than willing to set a  
11 reasonable time if both sides agree, but I would really be  
12 hard pressed to set it beyond a couple of weeks because it  
13 will be difficult then to try and schedule something in that  
14 time. As it is, I'm bumping civil cases. I don't want to  
15 bump them needlessly.

16           THE CLERK: There is one.

17           THE COURT: And yet I don't want to keep the civil  
18 attorneys on hold on the chance that this case will not go, so  
19 counsel need to tell me if two weeks is realistic. So  
20 everyone knows, my scheduling order does indicate that absent  
21 a plea agreement being presented to the Court and accepted on  
22 the date the motions were originally scheduled, then the Court  
23 would not entertain a plea to anything short of the entire  
24 indictment. However, Mr. Resnick points out the complicated  
25 nature of the case, there have been various adjournments. As

1 you pointed out, Mr. Thompson, you were provided with  
2 discovery over the period of time, so it's not the typical  
3 case. In light of that, the Court would be willing to extend  
4 the time, but again, if your expert is -- let's start with  
5 this, when will Mr. Thompson have all the discovery or does he  
6 have it all now?

7 MR. RESNICK: I have another disk to give to him.  
8 As I said to Mr. Thompson, it's things he's seen. I think  
9 that is all he asked for and that's it.

10 THE COURT: So, Mr. Thompson, if you have the  
11 information today and you can meet with your expert next week,  
12 I guess I'll put it to you, why wouldn't you be in a position  
13 to make a decision in a couple of weeks. If you don't want  
14 to, that's fine. I can schedule it for trial. I'm trying to  
15 accommodate.

16 MR. THOMPSON: There is a state court proceeding  
17 that we're talking about simultaneously and working with  
18 simultaneously that is not my part, obviously, but we're  
19 trying to accommodate that as well. I understand the Court's  
20 time considerations, I'm hard pressed to say, yeah, it's going  
21 to only take two weeks to make the decision when I haven't  
22 seen the remainder of the discovery and I resent being pushed  
23 in that direction.

24 THE COURT: I don't think he is pushing you. I'll  
25 calendar it for two weeks. If you're not in a position then,

1 we'll just go to trial, that's, to me, that is the fairest way  
2 to do it. Give you some opportunity, Mr. Resnick, it's  
3 obviously a case where you want, on any possible disposition  
4 short of trial, you want to sit down and I'm sure your office  
5 wants to confer with the family members and, Mr. Thompson,  
6 likewise, you want to confer with family members. It's  
7 certainly understandable. What I'll do is I'll -- what is the  
8 status of the state court proceeding?

9 MR. RESNICK: Your Honor, both counsel are in court  
10 today. I think the trial --

11 THE COURT: I see Mr. Damelio. So, Mr. Damelio,  
12 you're representing Mr. Penev.

13 MR. DAMELIO: We're scheduled for trial, I believe,  
14 the 21st or 22nd of January, which looks like if you're  
15 starting on January 16th.

16 THE COURT: To whom is that case assigned?

17 MR. DAMELIO: Judge Bellini.

18 MR. THOMPSON: She is going to have a bad month.

19 THE COURT: I'll call her today on the scheduling  
20 matter and state because of the speedy trial constraints, our  
21 case has to go. What is your speedy trial clock there?

22 MR. DAMELIO: Actually, I apologize.

23 THE COURT: And who --

24 MR. RESNICK: Ms. Karle from the DA's office.

25 THE COURT: Ms. Karle, come on up and join the



1 crowd.

2 MR. DAMELIO: Judge, we have filed motions. We have  
3 a hearing date and motions are currently, upon the defense  
4 request, we have waived. Our motions are pending and we  
5 directed and agreed that the DA would not answer our motions  
6 basically until we see what happens here and how this case  
7 will proceed.

8 THE COURT: What is the day that Judge Bellini set a  
9 calendar date?

10 MR. DAMELIO: No, she indicated her trial date is  
11 the trial date.

12 THE COURT: What about the unresolved motions?

13 MR. DAMELIO: We intend to argue them probably the  
14 first week of December, the last day of November.

15 THE COURT: Just so I understand, what you're all  
16 indicating to me is there is discussions among all attorneys  
17 about some type of global resolution of both cases.

18 MR. THOMPSON: Yes.

19 THE COURT: Again, since everyone is here,  
20 presumably, Mr. Thompson, if you get the discovery, that would  
21 be -- although I understand it's maybe not as much time as you  
22 would prefer, I think it would be difficult to give any more  
23 time because of the speedy trial constraints here, and so  
24 everyone knows, we have a lot of spectators in court, on the  
25 state side, the defendant can waive the Speedy Trial Act. The

1 Speedy Trial Act requires that cases be tried within a certain  
2 amount of time. On the state side the defendant can waive the  
3 speedy trial requirements. Here in Federal Court, the  
4 defendant cannot waive. We're on a tighter clock. As you  
5 heard Mr. Resnick indicate, and Mr. Thompson agrees, under the  
6 Speedy Trial Act, the case would have to be tried by the 26th  
7 of -- the latest by the 26th of January and the defendant  
8 cannot, by agreeing, extend that time. So, what I'm going to  
9 do is put this down, today is the 17th, we'll put it down for  
10 December 1st.

11 THE CLERK: Is a Federal Defender training.

12 THE COURT: I'll put this down for 9 a.m. on Friday  
13 December 1st.

14 MR. THOMPSON: Actually, I think I'm speaking at  
15 that one. I'm a speaker.

16 THE COURT: I'll put it down for the Thursday  
17 before, 2 p.m. on Thursday the 7th. What I will do is I will  
18 call Judge Bellini and explain to her our situation. I'm  
19 sorry, Thursday November 30th, Thursday at 9 a.m.; is that all  
20 right?

21 MR. RESNICK: 30th.

22 MR. THOMPSON: I don't have my calendar.

23 THE COURT: If you can't let us know, we'll count on  
24 putting it down for Thursday November 30th at 9 a.m. for  
25 counsel to alert me whether they're -- again, there's been

1 some type of resolution reached. So, obviously, counsel know  
2 the procedure, but spectators may not, once an agreement then  
3 is presented to me, so to see if I would approve it. I don't  
4 have any input in the negotiation process. It's different  
5 than in state court. In the meantime, I will call Judge  
6 Bellini and tell her the situation. And, in any event, if the  
7 case is resolved, it appears both cases are resolved. If not,  
8 both cases will proceed to trial. And, in any event, her  
9 trial would have to be appear to be moved back. Since all  
10 counsel are here, you can perhaps take a moment and discuss  
11 the best way to approach any possible resolution short of  
12 trial. Both sides want to discuss any resolutions with  
13 representatives on both sides? We'll put it on then for 9  
14 a.m. on November 30th for counsel to inform the Court of  
15 whether the case will be resolved by plea. Now, if in the  
16 meantime you determine that it will be resolved and you can  
17 present the agreement to the Court, then we can proceed on the  
18 30th, if the agreement is acceptable to the Court. If you  
19 haven't, if we're unable to do that, but you believe a  
20 resolution is possible and you're not able to give me the  
21 agreement until the 30th, then I would expect a short turn  
22 around. I would, if I got the agreement on the 30th and you  
23 told me the resolution, I would put it down the next week to  
24 see if it would be resolved short of trial. Any other matters  
25 we need to address? So, what I'm going to do is contact Judge

1 Bellini and discuss the scheduling issue with her.

2 MR. THOMPSON: Very well.

3 MS. KARLE: Thank you, your Honor.

4 REPORTER CERTIFICATION

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6 I, Karen J. Bush, Official Court Reporter for the United  
7 States District Court, Western District of New York, duly  
8 appointed pursuant to provisions of Title 28 United States  
9 Code Section 753, do hereby certify that I did report in  
10 stenotype machine shorthand the proceedings held in the  
11 above-entitled matter;

12 Further that the foregoing transcript is a true and  
13 accurate transcription of my said stenographic notes taken at  
14 the time and place hereinbefore set forth.

15

16

17 Dated March 24, 2009

18 At Rochester, New York

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s\ Karen J. Bush

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